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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 IVAN HUERTA VALENCIA,

8 Plaintiff,

9 v.

10 TIMOTHY N. THOMPSON, et al.,

11 Defendants.

NO. 1:18-CV-3007-TOR

ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS AND  
DENYING DEFENDANT'S MOTION  
FOR AN AWARD OF ATTORNEY'S  
FEES

12  
13 BEFORE THE COURT are Defendant's Motion to Dismiss Complaint  
14 (ECF No. 10) and Motion for an Award of Attorney's Fees (ECF No. 11). These  
15 matters were heard without oral argument, the Court determined pursuant to LR  
16 7.1(h)(3)(B)(iv) that oral argument is not warranted. The Court has reviewed the  
17 record and files herein, and is fully informed. For the reasons discussed below,  
18 Defendant's Motion to Dismiss Complaint (ECF No. 10) is **GRANTED** and  
19 Defendant's Motion for an Award of Attorney's Fees (ECF No. 11) is **DENIED**.

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ORDER GRANTING DEFENDANT'S MOTION TO DISMISS AND DENYING  
DEFENDANT'S MOTION FOR AN AWARD OF ATTORNEY'S FEES ~ 1

1 **BACKGROUND**

2 On January 25, 2018, Plaintiff Ivan Huerta Valencia, proceeding *pro se*,  
3 filed a Complaint alleging a 42 U.S.C. § 1983 claim against Defendant Timothy N.  
4 Thompson and other unnamed Defendants. ECF Nos. 1; 4. Mr. Thompson was  
5 served on April 18, 2018 and proof of service was filed on May 2, 2018. ECF No.  
6 9. On May 9, 2018, Mr. Thompson filed the instant Motion to Dismiss and Motion  
7 for Attorney's Fees. ECF Nos. 10; 11. On June 20, 2018, Plaintiff filed an  
8 Opposition to Defendants' Motion to Dismiss. ECF No. 16.

9 **FACTS**

10 The following facts are drawn from Plaintiff's Complaint and are accepted  
11 as true for the purposes of the instant motion. Plaintiff asserts his claim against  
12 Mr. Thompson in his individual capacity and other unnamed Defendants in their  
13 individual capacities. ECF No. 4 at 2-3. Plaintiff contends that the underlying  
14 facts of his § 1983 claim are "malfeasance as per lease option to purchase, which  
15 was eradicated and erroneous." *Id.* at 4. Plaintiff states that there was a "violation  
16 of constitutional and judicial rights by Defendants willfully violating standard  
17 court procedures, including, but not limited to, Defendants' violation of Plaintiff's  
18 due process rights relating to federal judicial procedures." *Id.* He asserts that the  
19 injuries are to be determined, and demands immediate relief of \$750,000.00 for  
20 punitive and actual damages. *Id.* at 5.

## DISCUSSION

### A. Standard of Review

Federal Rule of Civil Procedure 12(b)(6) provides that a defendant may move to dismiss the complaint for “failure to state a claim upon which relief can be granted.” Fed. R. of Civ. P. 12(b)(6). To survive dismissal, a plaintiff must allege “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This requires the plaintiff to provide “more than labels and conclusions, and a formulaic recitation of the elements.” *Twombly*, 550 U.S. at 555. When deciding, the court may consider the plaintiff’s allegations and any “materials incorporated into the complaint by reference.” *Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1061 (9th Cir. 2008) (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)). A plaintiff’s “allegations of material fact are taken as true and construed in the light most favorable to the plaintiff[,]” but “conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim.” *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1403 (9th Cir. 1996) (citation and brackets omitted).

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1       **B. 42 U.S.C. § 1983**

2           Under 42 U.S.C. § 1983, a cause of action may be maintained “against any  
3 person acting under color of law who deprives another ‘of any rights, privileges, or  
4 immunities secured by the Constitution and laws,’ of the United States.” *S. Cal.*  
5 *Gas Co. v. City of Santa Ana*, 336 F.3d 885, 887 (9th Cir. 2003) (quoting 42 U.S.C.  
6 § 1983). The rights guaranteed by § 1983 are “liberally and beneficially  
7 construed.” *Dennis v. Higgins*, 498 U.S. 439, 443 (1991) (quoting *Monell v. N.Y.*  
8 *City Dep’t of Soc. Servs.*, 436 U.S. 658, 684 (1978)). “A person deprives another  
9 ‘of a constitutional right, within the meaning of section 1983, if he does an  
10 affirmative act, participates in another’s affirmative acts, or omits to perform an act  
11 which he is legally required to do that causes the deprivation of which the plaintiff  
12 complains.’” *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (brackets and  
13 emphasis omitted) (quoting *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)).  
14 But, “the state-action requirement reflects . . . the fact that ‘most rights secured by  
15 the Constitution are protected only against infringement by governments.’” *Lugar*  
16 *v. Edmondson Oil Co.*, 457 U.S. 922, 936 (1982) (citation omitted). A private  
17 party may only be appropriately characterized as a “state actor” when he exercises  
18 authority as a state official, acts together with or obtains significant aid from state  
19 officials, or because his conduct is otherwise chargeable to the State. *See Lugar*,  
20 457 U.S. at 937.

1           **1. Defendant Thompson**

2           Defendant requests the Court dismiss the Complaint because Plaintiff fails to  
3 plead any facts in support of the position that Defendant is a state actor or acted  
4 under color of law. ECF No. 10 at 4. Defendant emphasizes that no facts were  
5 provided as to how he violated standard court procedures or how these alleged  
6 violations would constitute state action. ECF Nos. 10 at 4; 4 at 4. Defendant  
7 argues that the only substantive fact set forth in the Complaint is in relation to a  
8 lease with option to purchase, but even liberally construing this fact does not  
9 provide an explanation for how Defendant's conduct was that of a state actor. ECF  
10 No. 10 at 5.

11           Plaintiff insists that the question regarding his denial of "Due Process and  
12 constitutional rights per improper mortgage company procedures" cannot factually  
13 be answered by the Defendant, and thus his allegations are "enough to raise a right  
14 to relief above the speculative level." ECF No. 16 at 3.

15           The Court finds that Plaintiff does not allege any facts demonstrating how  
16 Defendant is a state actor or acting under color of state law. Even if there may be a  
17 question of fact regarding improper mortgage company procedures, Plaintiff  
18 cannot sue Defendant under § 1983 because it is clear that Defendant is not a state  
19 actor. Plaintiff then fails to state a claim for relief that is plausible on its face when  
20 there are no facts alleged that Defendant is a state actor. *See Twombly*, 550 U.S. at

1 555. Accordingly, Defendant’s Motion to Dismiss is granted as the Court lacks  
2 jurisdiction under § 1983.

## 3 **2. Unnamed Defendants**

4 The Court also dismiss Plaintiff’s claim as it relates to the unnamed  
5 Defendants. To establish liability pursuant to § 1983, a plaintiff must set forth  
6 facts demonstrating how each defendant caused or personally participated in  
7 causing a deprivation of plaintiff’s specific protected rights. *Arnold v. Int’l Bus.*  
8 *Machines Corp.*, 637 F.2d 1350, 1355 (9th Cir. 1981); *Taylor v. List*, 880 F.2d  
9 1040, 1045 (9th Cir. 1989). Here, Plaintiff fails to allege any facts demonstrating  
10 how any individual unnamed defendant caused or personally participated in  
11 depriving Plaintiff of his Constitutional rights. Plaintiff is unable to provide any  
12 facts as to the unnamed Defendants’ involvement in this case or that they were  
13 acting under color of state law. *See* ECF No. 4 at 2-3. The Court thus could not  
14 find enough facts to state a claim for relief that is plausible on its face in regards to  
15 these unnamed defendants without knowing their individual actions. *See Twombly*,  
16 550 U.S. at 555.

## 17 **C. Leave to Amend**

18 Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend a  
19 party’s pleading “should [be] freely give[n] . . . when justice so requires,” because  
20 the purpose of the rule is “to facilitate decision on the merits, rather than on the

1 pleadings or technicalities.” *Novak v. United States*, 795 F.3d 1012, 1020 (9th Cir.  
2 2015) (citation omitted). “[A] district court should grant leave to amend even if no  
3 request to amend the pleading was made, unless it determines that the pleading  
4 could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203  
5 F.3d 1122, 1127 (9th Cir. 2000); *Lacey v. Maricopa Cty.*, 693 F.3d 896, 926 (9th  
6 Cir. 2012).

7 Here, Defendant insists that leave to amend should not be granted because  
8 amendment would be futile. ECF No. 10 at 6. Defendant emphasizes that Plaintiff  
9 alleges a real estate dispute. *Id.* Defendant argues that even if Plaintiff could  
10 conceivably amend the Complaint to allege a plausible claim for breach of  
11 contract, there is no set of circumstances where he will be able to amend the  
12 Complaint to allege a § 1983 claim or otherwise properly invoke the jurisdiction of  
13 this Court. *Id.* at 6-7.

14 The Court finds that Plaintiff cannot prevail and it would be futile to give  
15 him an opportunity to amend. Plaintiff does not have jurisdiction under § 1983 nor  
16 would he be able to assert diversity jurisdiction. The Court determines that there  
17 are no set of facts Plaintiff could allege to overcome this lack of jurisdiction.  
18 Plaintiff’s pleading then cannot possibly be cured by other facts and the Court  
19 dismisses his claims without leave to amend in federal court, but without prejudice  
20 to a state court action.

1       **D. Attorney's Fees**

2       Defendant moves the Court for an award of attorney's fees pursuant to 42  
3 U.S.C. § 1988 for \$2,941.50. ECF No. 11 at 1, 7. Pursuant to 42 U.S.C. § 1988,  
4 "the court, in its discretion, may allow the prevailing party, other than the United  
5 States, a reasonable attorney's fee." 42 U.S.C. § 1988(b). "A prevailing defendant  
6 may recover an attorney's fee only where the suit was vexatious, frivolous, or  
7 brought to harass or embarrass the defendant." *Hensley v. Eckerhart*, 461 U.S.  
8 424, 429 n.2 (1983).

9       Here, Defendant argues that Plaintiff's Complaint is groundless and without  
10 merit. ECF No. 11 at 5. Defendant also states that the underlying contract has a  
11 provision that awards attorney's fees to the prevailing party for "any dispute  
12 arising out of or relating to this Lease ...." ECF Nos. 11 at 6; 13 at 18. Defendant  
13 alleges that there is an element of bad faith because Plaintiff accepted and  
14 deposited the down payment check offered by Defendant. ECF Nos. 11 at 6-7; 12  
15 at 6-13.

16       The Court declines to award attorney's fees. The Court invokes its  
17 discretion to deny attorney's fees as Plaintiff is a *pro se* litigant with limited  
18 understanding of the jurisdictional rules of federal court. The Court also notes that  
19 this suit was easily resolved without a great burden on Defendant, as the case was  
20 dismissed in less than six months after Defendant filed one motion.



Moreover, while this Court does not have jurisdiction over the contractual dispute, the state courts would have jurisdiction. This Court did not reach the merits of the dispute, only whether Plaintiff brought his complaint in the right court.

**ACCORDINGLY, IT IS HEREBY ORDERED:**

1. Defendant's Motion to Dismiss Complaint (ECF No. 10) is **GRANTED**.

Plaintiff's claims are **DISMISSED without leave to amend** in federal court. This dismissal is without prejudice to Plaintiff bringing a state court action.

2. Defendant's Motion for an Award of Attorney's Fees (ECF No. 11) is **DENIED**.

3. The telephonic hearing on these motions, currently scheduled for June 28, 2018, is **STRICKEN**.

The District Court Executive is directed to enter this Order and Judgment accordingly, furnish copies to the parties and **CLOSE** the file

**DATED** June 25, 2018.



*Thomas O. Rice*  
THOMAS O. RICE  
Chief United States District Judge